United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

Brief for Appellee

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,338

337

GUARDIAN FEDERAL SAVINGS AND LOAN ASSOCIATION,
Appellant,

v.

JOHN O. HARPER, ADMINISTRATOR, *Appellee.*

Appeal from Order of the United States District Court for the District of Columbia, Holding Probate Court

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STATEMENT OF QUESTIONS PRESENTED

In the opinion of the appellee, the questions are:

1. Whether a custodian of funds of a decedent, located in the District of Columbia, may disburse those funds, after notice of death, to a foreign fiduciary, who has failed to qualify as an ancillary administrator in the District of Columbia and/or before the elapse of six months from the date of death.

2. Whether the United States District Court for the District of Columbia, Holding Probate Court, may issue a rule to show cause and order the release of funds to a properly qualified personal representative of the estate, when there is evidence of a concealment by a custodian of decedent's funds, and/or the custodian has released those funds out of the District of Columbia before the expiration of six months from the date of death.

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellee deems it necessary to add the following facts to appellant's statement of the case:

1. (Fourth paragraph, Page 2, appellant's brief) should read: "On April 8, 1965, after presenting the pass book of the deceased to appellant, as required by appellant's bylaws for withdrawals, appellee made demand upon the appellant for the sum of $6,076.46, (representing the principal plus accrued interest) at which time, appellant advised appellee of the fact that it had previously paid the funds over to the Alabama fiduciary (J.A. 5)."

2. (First full paragraph, Page 3, appellant's brief) should read: "On November 30, 1965, the lower court entered its order requiring appellant to deliver to appellee the sum of $6,076.46 (J.A. 9). Thereafter, on April 25, 1966, appellant filed a motion to set aside the order of November 30, 1965 (J.A. 9). Appellant contended that it was plain from the appellee's petition and otherwise that there never was, on the part of the Association, any "concealment" of the assets of the estate (J.A. 9), and that the lower court, Holding Probate Court, was without jurisdiction to decide disputes regarding the title or right to possession of personal property (J.A. 10). Appellee resisted the motion, contending: that, under D.C. Code Annotated, §§ 20-1503 (Supp. V, 1966), the administrator may file a petition in the court alleging concealment when he believes that a person is concealing any part of a decedent's estate; and that the administrator could reasonably believe a concealment under the circumstances. (J.A. —). Further, appellee contended that neither the Probate Court's jurisdiction, nor the title to the decedent's funds were at issue. (J.A. —). Finally, the appellee contended that the motion filed by appellant in April, 1966, followed by five months the final order of the Probate Court, issued in November, 1965, and that this was an unreasonable delay for filing such a motion. (J.A.—)."

STATUTES INVOLVED

District of Columbia Code Annotated, Supplement V, 1966 Sec. 20-331. Granting of letters of administration.

On the death of a person leaving real or personal estate in the District of Columbia, the Probate Court may grant letters of administration on his estate, on the application of a person interested, and on proof satisfactory to the court that the decedent died intestate.

Sec. 20-1329. Creditors' rights against property of nonresident decedent; Limitation

(a) On the death of a person not domiciled in the District of Columbia at the time of his death so much of his real and personal estate in the District of Columbia as may be necessary for the payment and discharge of just claims against him of creditors are also the subject of administration under authority and direction of the Probate Court, irrespective of the personal estate of the decedent at his place of domicile or elsewhere.

(b) The prosecution of claims referred to by subsection (a) of this section shall be commenced within six months after the death of the decedent. Sec. 20-1505. Suits by foreign executors and administrators.

A person to whom letters testamentary or of administration have been granted by the proper authority in any of the United States or the territories thereof may maintain a suit or action and prosecute and recover a claim in the District of Columbia in the same manner as if the letters had been granted to him in the District. The letters, or a copy thereof certified under seal of the authority granting them, are sufficient evidence to prove the granting of the letters, and the person has administration. The Probate Court of the District of Columbia may, however, upon the petition of any one interested, require from the person the security required by law in like cases from a resident administrator or executor, or the court may grant auxiliary or ancillary letters, if the case requires, to the same person or other persons.

Sec. 20-1701. Time for rendering first account.

An executor or administrator shall render to the Probate Court within twelve months from the date of his letters the first account of his administration, and may render the account six months after the date of his letters.

SUMMARY OF ARGUMENT

1. Appellant incorrectly disbursed the funds of the Lee Estate, when, less than a month from the date of death, it

released the funds to an Alabama fiduciary, without requiring the usual proof of ownership of the funds. This action violated appellant's own by-laws and the intent of the District of Columbia Code. D.C. Code Annotated §§ 20-1329 (Supp. V, 1966); *Sackett, Chapman, Brown and Cross* v. *Osgood*, 80 App. D.C. 99, 149 F. 2d 825 (1945).

2. The United States District Court for the District of Columbia, Holding Probate Court, has the jurisdiction to appoint a properly qualified personal representative of an estate whose assets are located in the District of Columbia at the time of death, D.C. Code Annotated §§ 20-331 (Supp. V, 1966), even if another court has appointed a foreign fiduciary, *In re Grinnage's Estate*, 69 App. D.C. 370, 101 F. 2d 695 (1938). Further, the Probate Court obtained jurisdiction over all the funds on deposit with appellant on January 23, 1965, and that court can order the delivery of these assets, either on the theory that they were concealed or that appellant had disbursed them without requiring ancillary letters of administration. *Duehay* v. *Acacia Mutual Life Insurance Company*, 70 App. D.C. 245, 105, Fd 2d 768, 124 A.L.R. 1268 (1939).

ARGUMENT

1. APPELLANT INCORRECTLY DISBURSED FUNDS OF THE LEE ESTATE, LOCATED IN THE DISTRICT OF COLUMBIA, WHEN IT PAID THEM TO A FOREIGN FIDUCIARY BEFORE ANCILLARY LETTERS WERE OBTAINED FROM THE PROBATE COURT IN THE DISTRICT OF COLUMBIA AND/OR SIX MONTHS HAD ELAPSED FROM THE DATE OF DEATH.

On January 22, 1965, George Barney Lee was alive and a resident of the District of Columbia. Among his personal property on that date was about $6056.28, on deposit, in the District of Columbia, with appellant. On the following day,

Mr. Lee died, and the title to the property immediately vested in his personal representative, *Watkins* v. *Rives*, 75 App D.C. 109, 125 F. 2d 33 (1941). The title to the Lee Estate funds was, therefore, never in abeyance. On the contrary, it vested immediately, but the selection of the specific person in whom the title vested awaited the appointment of the qualified personal representative of the estate.

Because Mr. Lee died intestate, as a resident of the District of Columbia, and leaving property in the District of Columbia, the U.S. District Court for the District of Columbia, Holding Probate Court, could, and did, grant appellee letters of administration, upon a proper showing of his qualification, D.C. Code Annotated §§20-331 (Supp. V, 1966). In his petition for letters of administration, appellee listed the known debts of the decedent. This list was based on appellee's personal inspection of the decedent's papers. However, the papers were not conclusive as to the total debts owed by Mr. Lee at his death.

Appellant was not familiar with decedent's affairs, to say nothing of his debts. Therefore, it was bound, by D.C. Code Annotated §§ 20-1329 (Supp. V, 1966), to be most cautious in its post-death treatment of the Lee funds, for it is entirely possible that these funds could, at the direction of the Probate Court, be used entirely to pay creditors. Unsure of the extent of Mr. Lee's obligations in the District of Columbia, it should have delayed disbursement of the funds for at least six months, in order that local creditors would be protected, as this is the intention of D.C. Code Annotated § § 20-1329; *Sackett, Chapman, Brown and Cross* v. *Osgood*, 80 App. D.C. 99, 149 F. 2d 825 (1945).

Surely, appellant must be charged with an intimate knowledge of the legally correct method of handling all accounts within its charge because this is its primary business. The incident involving the George Barney Lee account appears even more ludicrous when appellant failed to follow its own important rule of procedure for withdrawals, printed in

each depositor's passbook: "THIS BOOK MUST BE PRESENTED FOR WITHDRAWALS." (J.A.—). The pass book was never in the possession of Robert Lee, the Alabama fiduciary, subsequent to the death of George Barney Lee. Here, "possession was certainly one-half of the law," for if appellant had held up payment of the funds until the passbook was presented by appellee, the title to the account would have been evidenced by appellee's possession of the pass book, the funds could have been correctly disbursed to him, and there would have no need for this, the instant proceeding.

In disbursing the funds of George Barney Lee, contrary to the law of the District of Columbia and its own by-laws, therefore, appellant has incorrectly and illegally delivered assets of the estate to a person who is a stranger to the estate in the District of Columbia.

2. THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, HOLDING PROBATE COURT, HAS JURISDICTION TO DECIDE WHICH OF TWO PERSONS ARE PROPERLY QUALIFED AS THE PERSONAL REREPRESENTATIVE OF AN ESTATE AND TO ORDER CONCEALED ASSETS TURNED OVER TO THIS PROPERLY QUALIFIED ADMINISTRATOR.

When appellee learned of appellant's treatment of the Lee Estate funds, he had no alternative but to enlist the aid of the Probate Court, because the question of title was not involved, but simply whether the Alabama fiduciary or the District of Columbia fiduciary was entitled to possession and control over the funds. Because the aforementioned court has been empowered by statute to appoint administrators over decedent's estates, D.C. Code Annotated §§ 20-331 (Supp. V, 1966), it is reasonable to infer that it also has the power to decide which of two personal representatives should have control over the assets located in the District

of Columbia. In deciding this question, this Probate Court need not accept the appointment of a foreign fiduciary as binding on its own deliberations. *In re Grinnage's Estate*, 69 App. D.C. 370, 101 F. 2d 695 (1938). Once the Probate Court decided this question, which, appellee contends, can only be answered by designating appellee, the court then faced the problem of directing the payment of decedent's funds to the proper personal representative.

In his petition for a rule to show cause for discovery and delivery of assets (J.A. 5), appellee relates, in great detail, the circumstances surrounding his inquiry to appellant about decedent's account. In spite of appellant's explanations in his answer to the rule to show cause, (J.A. 7), and at oral argument on November 29, 1965, appellee contends that he could successfully file such a petition, under D.C. Code Annotated, §§ 20-1503 (Supp. V, 1966), based on the almost unbelievable explanation offered to him and the extreme naivete that appellant showed by even offering such an explanation. The above states, in part: "When an executor, administrator, or collector believes that a person is concealing any part of his decedent's estate, . . .". Appellee contends that he was not only not bound to accept the explanation of appellant concerning decedent's funds, but, on the contrary, could reasonably *believe* (the exact word used in the statute) that the funds in question were being concealed by appellant from him. This belief could well be grounded in the fact that, not only did the appellant violate the laws of the District of Columbia, D.C. Code Annotated §§ 20-1329 (Supp. V, 1966), and its own by-laws listed in the cover of each pass book, but also that appellant demonstrated a grossly imprudent banking practice. Ordinarily, the period of one year fixed by this section is the period that local debtors may reasonably await assertion of claims of local creditors before making payment to a foreign domiciliary executor or administrator, unless otherwise protected against such claims. *Cameron* v. *Riggs National Bank*

of Washington, D.C., 53 F. Supp. 56 (1944). The lower court heard oral arguments on November 29, 1965, from opposing counsel, offering the explanation for the questionable practice, and attacking that explanation, respectively. After hearing the arguments and examining the whole case, as required by the D.C. Code, the Honorable Joseph C. McGarraghy found that a show cause petition and order would lie against appellant.

Even if a concealment were not shown, however, appellee contends that appellant could not legally allow the funds to be removed from the District of Columbia, at least until the Probate Court is satisfied, where the decedent was domiciled and, that there are no creditors within the District of Columbia who may have claims against the estate. *Duehay* v. *Acacia Mutual Life Insurance Company*, 70 App. D.C. 245, 105 F. 2d 768, 124 A.L.R. 1268 (1939). In addition, as noted by the court in *Duehay*, at page 253:

> "This does not result, as appellant contends, in making the section operative '• • • not upon all the nonresident's assets in the District of Columbia, but only upon "so much" as may be necessary • • •.' The section goes on to provide that this designated portion *shall also* be the subject of administration. The only way in which it can be subjected to administration in the District is by ancillary proceedings. The purpose of the section is obviously not to *limit* ancillary administration to *such part* of the estate but is, instead, merely to supplement Section 255, which provides:
> '• • • That the probate court of the District shall have the power, *upon the petition of anyone interested,* to require from such person or persons the security required by law in like cases from a resident administrator or executor, or the said court may grant auxiliary or ancillary letters, *as the case may require, to the same or other persons.*' (Emphasis supplied)"

It should be noted that similar wording is used in the applicable sections of the current enactment of the statute, D.C. Code Annotated §§ 20-1329 and §§ 20-1505 (Supp. V, 1966).

As in *Duehay*, therefore, the Probate Court had jurisdiction over all of the funds on deposit at Guardian Federal Savings and Loan Association on January 23, 1965. Because the appellant, Guardian Federal, released these funds without instituting ancillary administration proceedings, the Probate Court is empowered to enter appropriate orders to restore the funds to the proper personal representative of the estate.

Finally, opposing counsel argued administrator's petition to show cause for discovery and delivery of assets, at length, on November 29, 1965, requiring Guardian Federal to pay over the funds in question to John O. Harper as administrator for the Estate of George Barney Lee. The rule of procedure governing the filing of a motion for relief from a judgment or order requires that this "motion shall be made within a reasonable time," and that the Court may only grant the motion "upon such terms as are just." Fed. R. Civ. P. 60(b). The administrator assumes that Guardian Federal's motion would be based on subdivision (b)(6) of the foregoing rule, providing for relief "for any other reason." Further, it is clear that what constitutes a "reasonable time" under this rule is to be decided under the circumstances of each case. *Delzona Corporation* v. *Sacks*, 256 F. 2d 157 (3rd Cir. 1959). *L. M. Leathers' Sons* v. *Goldman*, 252 F. 2d 188 (6th Cir. 1958). It should be noted here that on April 5, 1966, one year had elapsed since the appointment of John O. Harper as administrator of the Estate of George Barney Lee. Before that date, the first account of the administrator was required to be filed with the Probate Court, according to the laws of the District of Columbia, D.C. Code Annotated §§ 20-1701 (Supp. V, 1966). The administrator submits that the five months elapsing from November 30, 1965, to April 5, 1966, is an unreasonable time under the circumstances of the instant case, for it is clear that it is now the duty of the administrator to deliver up and distribute the residue of the estate to those entitled thereto. *Sterrett* v.

National Safe Deposit, Savings & Trust Company, 10 App. D.C. 131 (1897).

3. THE CASES CITED BY APPELLANT ARE ALL DISTINGUISHABLE ON THE FACTS FROM THE INSTANT CASE.

The instant case involves a demand by a properly appointed domiciliary administrator, in the District of Columbia, for funds on deposit with a District of Columbia savings and loan association, which could be best described as a bare custodian of the funds. Appellee contends that the capacity of the parties is the touchstone from which the Probate Court derives its jurisdiction in the instant case. In the case of the Lee Estate account, the Probate Court has jurisdiction because an administrator and a custodian are involved, and the title to the property in question is not involved. In the cases cited by appellant, other types of parties are involved, and of necessity, the Probate Court in each case must consider the question of its jurisdiction over the matter because the title to decedent's property is at issue. Taken in order of appearance, they are:

a. *Cook* v. *Speare,* 13 App. D.C. 446 (1898), is a suit by an alleged creditor of the estate against the attorney for the administrator.

b. *Scott* v. *Burch,* 6 H.&J. 67 (1823), is a suit by an administrator against a surety party who had taken possession of estate property after the administratrix had failed to give counter-security.

c. *Richardson* v. *Daggett,* 24 App. D.C. 440 (1904), is a suit by two creditors of a deceased, intestate, District of Columbia, resident against the son of the deceased. Prior to the suit, the creditors had been appointed collectors of the estate assets. By way of dicta, at page 445, the court states: "Had there been no adverse title claimed by respondent (deceased's son), an order of delivery would have followed

as a matter of course." Appellee contends that this is law governing the instant case, for appellant Guardian Federal has no title to the funds to be claimed.

d. *Miniggio* v. *Hutchins*, 43 App. D.C. 117 (1915), is a suit by a creditor against a collector of the estate.

e. *Jones* v. *Dunlap*, 73 App. D.C. 59, 115 F. 2d 689 (1940), is a case involving a suit by a guardian against the trustee of an active, executory trust; the trustee, at all times, denied title to the trust.

f. *Holzerbeirlein* v. *Grant, et. al.*, 73 App. D.C. 154, 117 F. 2d 26 (1941), is a case by a distributee claiming personal property of the estate, under a written contract, against the executors of her husband's estate.

g. *Fidelity & Deposit Company of Maryland* v. *McQuade*, 74 App. D.C. 383, 123 F. 2d 337 (1941), is a suit by a creditor of the deceased against a purchaser, for value, of real estate from deceased prior to her death, where the creditor had notice of the purchase.

h. *Watkins* v. *Rives*, 75 App. D.C. 109, 125 F. 2d 33 (1942), is a suit by collectors of an estate against an executor, who was dismissed after the will in question was denied probate.

i. *White* v. *Schwartz*, 112 App. D.C. 331, 302 F. 2d 916 (1962), is a suit where the administratrix failed, on appeal to join, as a third-party defendant, a trustee in bankruptcy appointed to hold assets from the sale of property formerly belonging to the estate.

CONCLUSION

The lower court had two separate opportunities, to wit, November 30, 1965, and May 24, 1966, to consider all questions herein. After hearing oral argument, the second time, approximately six months after the order of November 30, 1965, the chief thrust of appellant's argument was a two-pronged attack on the jurisdiction of the Probate Court.

These matters could have been raised earlier, but were not. In the light of the lower court's decision, on both occasions, and the cases cited in this brief, appellee contends that it was competent to rule on this question, under either, or both of the District of Columbia code sections in question. Finally, having gained jurisdiction over the proceeding, the lower court ruled correctly, after considering the case as a whole, as required also by the District of Columbia code. Therefore, the final order appealed from should be affirmed.

Respectfully submitted,

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BRIEF FOR APPELLANTS
AND
JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,338

GUARDIAN FEDERAL SAVINGS AND
LOAN ASSOCIATION,

Appellant,

v.

JOHN O. HARPER, ADMINISTRATOR,

Appellee.

Appeal from Judgment of the United States District Court
for the District of Columbia Holding Probate Court

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STATEMENT OF QUESTIONS PRESENTED

1. Whether the U. S. District Court for the District of Columbia had jurisdiction under Section 11-522, District of Columbia Code, 1961 Ed., Supp. V, 1966, to determine the question of title and right to possession of certain funds paid by appellant to a foreign fiduciary, and claimed by the appellee, holding Letters of Administration issued by the lower court.

2. Whether the lower court, "Holding Probate Court", erred by assuming jurisdiction under Section 20-1503, District of Columbia Code, 1961 Ed., Supp. V, 1966, where there was no basis for a claim of "concealment of assets" within the meaning of Section 20-1503.

TABLE OF CASES

STATUTES

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,338

GUARDIAN FEDERAL SAVINGS AND
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v.

JOHN O. HARPER, ADMINISTRATOR,

Appellee.

Appeal from Judgment of the United States District Court
for the District of Columbia Holding Probate Court

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from a final judgment and order of the United States District Court for the District of Columbia "Holding Probate Court" rendered on appellant's motion to set aside order to deliver assets decided in favor of appellee and directing appellant to pay and deliver to appellee the sum of $6,076.46. This Court has jurisdiction to review the judgment and order under Section 1291 of Title 28 of the United States Code.

STATEMENT OF THE CASE

Appellant is a federally insured savings and loan association with an office in the District of Columbia at 1369 Connecticut Avenue, N. W., which held funds on deposit to the credit of one George Barney Lee in savings account No. 59977 (J.A. 2). George Barney Lee died on January 23, 1965, in the Walter Reed General Hospital in the District of Columbia (J.A. 1). At the time of his death, there was on deposit to his credit the sum of $6,056.28 in said account (J.A. 2).

On February 2, 1965, Letters of Administration *ad collegendum* were issued to Robert E. Lee, a brother of the decedent by the Probate Court in and for Tuscaloosa County, Alabama (J.A. 4). On February 16, 1966, upon presentation of these Letters, appellant paid over to Robert E. Lee the sum of $6,076.46 and closed out account No. 59977 in the name of the decedent (J.A. 4).

On March 30, 1965, the United States District Court for the District of Columbia issued Letters of Administration of the estate of the decedent to the appellee as the representative of decedent's mother, described as his sole heir at law and next of kin (J.A. 3).

On April 8, 1965, appellee made demand upon the appellant for the sum of $6,076.46, (representing the principal plus accrued interest) at which time, appellant advised appellee of the fact that it had previously paid the funds over to the Alabama fiduciary (J.A. 5).

Thereafter, appellee filed a petition in the lower court for a Rule to Show Cause against appellant why it should not disclose all of the assets it had in its possession belonging to the decedent's estate (J.A. 3). In opposition to the Rule to Show Cause, appellant contended that the petition on its face showed that the assets in question had been paid over to the Alabama fiduciary (J.A. 7), that the petition constituted a collateral attack on the judgment of the Alabama Court and could not therefore be

maintained in the lower court (J.A. 8), and that a person in the District of Columbia holding funds of a non-resident decedent who delivers or pays such funds to a foreign fiduciary could not be made to pay again, to a local fiduciary, if the rights of local creditors have not been prejudiced (J.A. 8).

On November 30, 1965, the lower court entered its order requiring appellant to deliver to appellee the sum of $6,076.46 (J.A. 9). Thereafter, on April 25, 1966, appellant filed a motion to set aside the order of November 30, 1965 (J.A. 9). Appellant contended that it was plain from the appellee's petition and otherwise that there never was, on the part of the Association, any "concealment" of the assets of the estate (J.A. 9), and that the lower court, Holding Probate Court, was without jurisdiction to decide disputes regarding the title or right to possession of personal property (J.A. 10). The lower court denied appellant's motion and it is from that order which this appeal is taken (J.A. 12).

STATUTES INVOLVED

District of Columbia Code, 1961 Edition

"Sec. 11-512. Limitation on jurisdiction — Enforcement of decrees and orders.

> The probate court shall not, under pretext of incidental power, or constructive authority, exercise any jurisdiction whatever not expressly given by this Code; but every judgment, decree, decision, or order, of the said court, may be enforced by attachment and sequestration as aforesaid; and if the said judgment, decree, decision, or order, be for paying money, the property sequestrated may, at the discretion of the court, be applied to the purpose for which such judgment, decree, decision, or order, was given.

"Sec. 11-522. Probate and guardianship jurisdiction.

> (a) The United States District Court for the District of Columbia has and may exercise all the power and jurisdiction by law held and exercised by the Orphans' Court of Washington County, District of Columbia, prior to June 21, 1870.

(b) In addition to the jurisdiction conferred by subsection (a) of this section, the District Court has full power and authority and plenary jurisdiction to:

(1) hear and determine questions relating to the execution or validity of wills devising real property within the District of Columbia, and of wills and testaments properly presented for probate in the court, and admit them to probate and record;

(2) take the proof of wills of either personal or real property and admit them to probate and record, and for cause revoke the probate thereof;

(3) grant, and, for any of the causes prescribed by law, revoke, letters testamentary, letters of administration, letters *ad collegendum*, and letters of guardianship, and appoint successors to those persons whose letters are revoked;

(4) hear, examine, and decree upon accounts, claims, and demands existing between executors or administrators and legatees, or persons entitled to a distributive share of an intestate estate, or between wards and their guardians;

(5) enforce the rendition of inventories and accounts by executors, administrators, collectors, guardians, and trustees required to account to the court; and

(6) enforce the distribution of estate by executors and administrators, and the payment or delivery by guardians of money or property belonging to their wards.

(c) Neither the execution nor the validity of a will or testament admitted to probate and record in the court may be impeached or examined collaterally. Subject to other provisions of this Part or other provisions of law, it is *res judicata* in all respects and to all persons.

(d) In exercising its powers and jurisdiction under this section, the District Court is known as the Probate Court.

(e) This section does not affect the jurisdiction conferred upon the Juvenile Court of the District of Columbia by section 11-1551(a)(3)."

"Sec. 20-1503. Concealment of assets by strangers.

> When an executor, administrator, or collector believes that a person is concealing any part of his decedent's estate, he may file a petition in the court alleging the concealment, and the court may compel an answer thereto on oath. When the court is satisfied, upon an examination of the whole case, that the party charged has concealed any part of the estate of the deceased, it may order the delivery thereof to the executor, administrator, or collector, and may enforce obedience to the order in the same manner in which orders of the court may be enforced."

STATEMENT OF POINTS

1. The District Court, sitting in probate, is a Court of limited powers and jurisdiction and does not have jurisdiction to determine the question of title and right to possession of funds paid by appellant to an Alabama fiduciary and claimed by appellee. The District Court erred in ruling to the contrary.

II. Although its jurisdiction was invoked under Section 20-1503, District of Columbia Code, 1961 Ed., Supp. V, 1966, upon appellee's claim of concealment of assets, the District Court did not have the power to determine the question of actual ownership of the fund when appellee's petition showed, on its face, that there had been no "concealment", and that appellant had made full disclosure that the funds had been paid to the Alabama fiduciary. The District Court erred in ruling to the contrary.

SUMMARY OF ARGUMENT

I. A question of title and control of the possession of funds held by appellant in a decedent's savings account and claimed by and paid over to an Alabama fiduciary arose when said funds were subsequently claimed by appellee. It is well settled that the District Court sitting as a Probate Court is a tribunal of limited jurisdiction and does not have any jurisdictional

authority under the District of Columbia Code to settle questions involving the ownership of property.

Accordingly, the District Court erred in assuming jurisdiction.

II. There was never any question of concealment of the assets of decedent's estate on the part of appellant within the meaning of Section 20-1503. When appellant disclaimed possession and made full disclosure as to the disposition of all of said assets, the provisions of Section 20-1503 were fully satisfied. When a question as to the right of ownership of appellant's funds as arose as between appellant and appellee, the District Court sitting as a Probate Court had no further power under Section 20-1503 but should have terminated the proceeding.

ARGUMENT

I. THE DISTRICT COURT SITTING IN PROBATE IS A COURT OF LIMITED POWERS AND JURISDICTION AND DOES NOT HAVE JURISDICTION TO DETERMINE THE QUESTION OF TITLE OR CONTROL OF POSSESSION OF FUNDS PAID BY APPELLANT TO AN ALABAMA FIDUCIARY AND CLAIMED BY APPELLEE

Appellee asserts a claim of title and possession to funds which at the time proceedings were commenced in the lower court were in the possession of an Alabama fiduciary. Not being able to bring the Alabama fiduciary into court, Appellee invoked the jurisdiction of the District Court, sitting in probate, to assert his claim to funds which had formerly been on deposit with appellant. By its order directing appellant to pay and deliver the funds appellant had previously paid to the Alabama fiduciary, to appellee, the District Court, by implication, made a determination that appellee rather than the Alabama fiduciary had a rightful claim to title and possession thereof. Section 11-522, District of Columbia Code, 1961 Ed., Supp V., confers upon the District Court the power and jurisdiction by law held and exercised by the Orphans' Court of Washington County, District of Columbia, prior to June 21, 1870. Paragraph (b) of Section 11-522

confers upon the District Court additional power and authority and plenary jurisdiction with respect to certain enumerated matters. But nowhere is there enumerated in this Code section or any of its predecessors the jurisdiction to settle questions of title and ownership of property. Section 11-512, District of Columbia Code, 1961 Ed., Supp. V., prohibits the Probate Court from exercising any jurisdiction whatever not expressly given.

The limited scope of the Court's jurisdiction was first made explicit in the early case of *Cook* v. *Speare*, 1898, 13 App. D. C. 446, in an opinion by Chief Justice Alvey reviewing an order of the Orphans' Court (predecessor to this branch of the District Court). The order of the Orphans' Court required a sum of money to be paid to the Register of Wills although opposing claims of ownership were alleged by the Administrator who asserted a personal claim to the fund and by a creditor of decedent's estate who asserted that the fund was an asset of the estate and subject to his claims. In reviewing, the Court held:

> "The court in passing this order was not vested with and authorized to exercise the broad chancery jurisdiction by which courts of equity may order money or securities to be brought into court, to await the final disposition of the case. But it was acting, and could act, only under a special statutory jurisdiction. * * *" (13 App. D. C. at 451)
>
> "The power to order money or securities to be brought into court, in advance of the final decree or determination of the right to it, is a high and delicate power, pertaining to the exercise of the jurisdiction of a court of equity, and not to other special statutory jurisdiction, unless the power be given by the terms of the statute, or by necessary implication from the terms employed. * * *" (13 App. D. C. at 452)
>
> "This power of directing and compelling parties, whether technical parties to a pending proceeding or otherwise, to deliver or pay over money or property, or to bring funds into court, was never supposed to have been conferred upon the Orphans' Court by the Act of 1798, Ch. 101, because in such applications are generally involved questions of common law or equity jurisdiction, as to the rights of the parties concerned, that

> could only be tried and determined by the courts of common law or equity. This was expressly decided in the case of *Scott* v. *Barck*, 6 H.&J. 67, by the Court of Appeals of Maryland, in 1823. * * * Such adjudication of title and coercion of payment are judicial action not within the scope of the special statutory jurisdiction of the Orphans' Court." (13 App. D. C. at 453, 454)

The decision of the Court of Appeals for this circuit in *Richardson* v. *Daggett*, 1904, 24 App. D. C. 440, reviewed the question of whether the Probate Court had jurisdiction to determine the question of title and right to the possession of property to which conflicting claims had been asserted. Affirming the Probate Court which had dismissed a petition for the discovery of allegedly concealed assets of a decedent's estate, for want of jurisdiction, the Court held at Page 444:

> "By Sec. 116 of the recent Code the name of the court was changed to that of probate court, but the jurisdiction and powers conferred upon the new court are substantially the same as those of its predecessor under the former law. * * *"

Citing *Cook* v. *Speare*, *supra*, the court emphasized that:

> "In that case it was substantially held that it [Orphans' Court] had no jurisdiction to determine a question of title between the estate and persons in possession of personal property claiming ownership thereof." (24 App. D. C. at 444)

Where there were contested claims against a decedent's estate, it has been held, in a decision of this Court, that the Probate Court does not have jurisdiction to entertain a petition to compel payment of an asserted claim by the collector to the claimant. *Miniggio* v. *Hutchines*, 1915, 43 App. D. C. 117. The Court held:

> "Nowhere in the statutes is the probate court vested with authority to compel an executor or administrator to pay a claim against an estate. Under Sec. 330 of the Code, the approval of a claim properly proved relieves the executor or administrator from liability

> if he elects to pay it; but, by Sec. 342, he may contest it at law, and, in such action, the approval of the Probate Court by Sec. 343 is deprived of even evidentiary affect. The jurisdiction is the same as to a *collector* or *administrator pendente lite*. (43 App. D. C. at 118)

In the case of *Jones* v. *Dunlap*, 1940, 73 App. D. C. 59, 115 F.2d 689, this Court was presented with a situation not unlike that presented by the instant case. There, an appeal was taken from an order of the District Court holding Probate Court requiring appellant to show cause why she should not turn over to appellee, guardian of the estate of a minor, funds appellee claimed as assets by the minor's estate. Appellant claimed the funds as trustee for the minor. Reversing the District Court, this Court, in an opinion by Associate Justice Edgerton cited the *Cook* and *Richardson* decisions and held that the Probate Court,

> "Like its predecessor the Orphans' Court, * * * has no jurisdiction to decide a dispute regarding the title or the right of possession of personal property. * * * We think it follows that the Probate Court had no jurisdiction to determine who was entitled to possession." (115 F.2d at 689)

That the Probate Court is a tribunal of limited jurisdiction to which power to settle the ownership of property has not been given was again recognized in *Holzbeierlein* v. *Grant, et al.*, 1941, 73 App. D. C. 154, 117 F.2d 26, where this Court affirmed the District Court, sitting in probate, which had dismissed a petition seeking relief in the nature of specific performance because petitioner was found to be in the position of a third party claiming ownership, as against her husband's estate, of securities held by the executors.

Exhaustive reviews of the jurisdictional background of the District Court sitting as a Probate Court are found in the opinions of this Court in *Fidelity & Deposit Co. of Maryland* v. *McQuade*, 1941, 74 App. D. C. 383, 123 F.2d 337 and *Watkins* v. *Rives*, 1942, 75 App. D. C. 109, 125 F.2d 33. The opinion in *Fidelity* sums up the authorities in the following manner:

"Repeatedly, we have said that that Court [Probate Court] has only the powers expressly conferred on it by law. Its predecessor was the Maryland Orphans' Court, and when adopted into the District law, it was settled by the Maryland decisions that the court was a court of limited jurisdiction." (123 F.2d at 339)

In *Watkins*, this Court stated the results of its review thusly:

"As has been stated frequently, the Probate Court is one of limited powers and jurisdiction. Generally speaking, it exercises the same powers as were conferred upon the Orphans' Court of Maryland by the Act of 1798, together with such additional powers as have been conferred by Congress since that time . . . .

"Thus, in construing Section 253 of Title 29 of the District of Columbia Code (1929) [The statutory predecessor of present Section 11-522] we . . . concluded that the Probate Court lacked power, under that section, to try title to property or right of possession thereof, against a stranger to the estate who claims title adversely to it." (125 F.2d at 35)

This principle was again recognized by this Court in *White* v. *Schwartz*, 1962, 112 App. D. C. 331, 302 F.2d 916, where it was held that a Bankruptcy Court's determination of title to assets over which the Probate Court had prior custody would not interfere with the jurisdiction of the Probate Court, because:

"The District Court of Columbia Code (1961) provides in Section 11-512 that the 'Probate Court shall not, under the pretext of incidental power, or constructive authority, exercise any jurisdiction whatever not expressly given by this Code * * *' That court 'has no jurisdiction to decide a dispute regarding the title or the right or possession of personal property.'" (302 F.2d at 917)

In the absence of any special jurisdictional authority in the District Court sitting as a Probate Court which might have been invoked to enable it to determine the adverse claim of title asserted by appellee, the decision of the District Court exceeds the bounds of the limited statutory

authority conferred upon it by Section 11-522 and this Court's clearly defined construction of that limited jurisdictional authority. The decision of the District Court violates the clear mandate of Section 11-512. Accordingly, the decision of the District Court must be reversed.

II. ALTHOUGH ITS JURISDICTION WAS INVOKED UNDER SECTION 20-1503, DISTRICT OF COLUMBIA CODE, 1961 ED., SUPP. V., 1966, UPON APPELLEE'S CLAIM OF CONCEALMENT OF ASSETS, THE DISTRICT COURT DID NOT HAVE THE POWER TO DETERMINE THE QUESTION OF ACTUAL OWNERSHIP OF THE FUND WHEN APPELLEE'S PETITION SHOWED, ON ITS FACE THAT THERE HAD BEEN NO "CONCEALMENT", AND THAT APPELLANT HAD MADE FULL DISCLOSURE THAT THE FUNDS HAD BEEN PAID TO THE ALABAMA FIDUCIARY

When the District Court ordered appellant to reimburse appellee for the fund previously paid over by appellant to the Alabama fiduciary, the Court, of necessity, made a determination of the appellant's and appellee's conflicting claims to the ownership and control of possession of appellant's funds. Since appellant had previously paid over the *res* it had held to the credit of the savings account in decedent's name, any amount it was required to pay appellee would have to come out of the funds appellant claimed as its own. Appellee claimed these funds on the theory that the money paid over to the Alabama fiduciary was money had and received. This is clearly the assertion of a claim to recover a debt owed to decedent's estate and raises the question of right to ownership and control of possession of said funds. Under these circumstances, jurisdiction to require appellant to reimburse appellee for the fund may not be founded upon Section 20-1503, District of Columbia Code, 1961 Ed., Supp. V. This Court has held, *Richardson* v. *Daggett*, 1904, 24 App. D. C. 440, that where an adverse title is claimed by the respondent, the summary remedy provided by this section does not apply. The Court stated that:

"The general purpose of Sec. 122 [the statutory predecessor of present Section 20-1503] was to furnish a prompt remedy in the Probate Court for the discovery of the assets of estates in administration therein that may have been concealed, and their reduction to possession when so discovered. But we are unable to find a further intention to confer upon the Probate Court the jurisdiction to determine the question of the actual ownership of such property when the title thereto is claimed by the representative of the estate on one hand and the party in actual possession on the other. The practical effect of a contrary construction would be to remit to the Probate Court, sitting as a court of equity, the final determination of the title to all personal property claimed by the representatives of the estate as against adverse holders thereof; for the extension of this jurisdiction would be accomplished by the allegation that they had been concealed . . . ."
(24 App. D. C. at 445)

Here, as in the *Richardson* case, once appellant made full disclosure of the disposition it had made of the fund (a fact of which appellee had previously been made fully aware) the provisions of Section 20-1503 were completely satisfied and as in *Richardson*, "all that remained for the Probate Court to do was to terminate the proceeding and leave the parties to their remedies in the courts of general jurisdiction, either at law or in equity as the conditions might determine." (24 App. D. C. at 446)

Had the procedure set forth in *Richardson* been followed by the District Court, appellee would have been fully entitled to institute proceedings by invoking the general jurisdiction of the District Court where he could have asserted his claim to recover a debt allegedly owed to decedent's estate. Appellant would have had the benefits of a full trial including all of the incidents thereof, not only for the protection of its own position but also, in the event its position did not prevail, the right thereafter to assert a claim over, as against the Alabama fiduciary. Nowhere in the District of Columbia Code has Congress conferred the power to try such an action

in the District Court sitting as a Probate Court. It was, therefore, an error for the District Court to order appellant to reimburse appellee because jurisdiction to do so is not conferred by Section 20-1503.

CONCLUSION

In view of the above, it is respectfully submitted that the order of the District Court should be reversed.

Respectfully submitted,

LEONARD S. MELROD
JOSEPH V. GARTLAN, JR.
815 Connecticut Avenue, N. W.
Washington, D. C.
Attorneys for Appellant

INDEX

JOINT APPENDIX

[Filed March 29, 1965]

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

HOLDING PROBATE COURT

In re Estate of	:	Administration No. 113673
GEORGE BARNEY LEE, deceased	:	Address of Petitioner, JOHN O. HARPER, Esquire 213 Southern Building Washington, D.C. 20005

PETITION FOR LETTERS OF ADMINISTRATION

The petition of John O. Harper respectfully represents to this Honorable Court:

1. That your petitioner is an adult citizen of the United States and a resident of the District of Columbia and files this petition as a duly authorized representative of decedent's Mother, the sole heir at law and next of kin of George Barney Lee, the above named decedent.

2. The said George Barney Lee was a citizen of the United States and a resident of the District of Columbia and departed this life on the 23rd day of January, 1965, at Walter Reed General Hospital in said District, and that your petitioner has made diligent search and inquiry for a will of said decedent and has neither found one nor obtained any information that there was one, and verily believes that the decedent died intestate.

3. That the decedent obtained an absolute divorce from his wife, Ruth Lee, and the said decedent never remarried.

4. That the decedent left him surviving the following named persons, who are all adults, his only heir at law and next of kin: Lucy A. Lee, his mother, residing at Jamestown, Pennsylvania; and survived by the following persons: Arthur Lee, a brother, whose address is Box 54, Windsor, Ohio; Robert Lee, a brother, residing at 111 Greenview Avenue, Tuscaloosa,

Alabama; Williard Lee, a brother, residing at Jamestown, Pennsylvania; Harold Lee, a brother, residing at Corvallis, Oregon; and Lloyd Lee, a brother, whose last known address was Aurora, Colorado, or Parker, Colorado. There is no child or descendant, parent, brother or sister, or child of a deceased brother or sister surviving the decedent, except the mother and brothers above named.

5. That the decedent left no real estate, nor interest in any real estate, in the District of Columbia or elsewhere.

6. That said decedent left personal property located in the District of Columbia and valued approximately, in your petitioner's opinion, at $7834.00, as follows: a check for $122.00, payable to the estate of decedent, issued by the Patient's Trust Fund of Walter Reed General Hospital; a checking account at the Riggs National Bank, Washington, D.C., Account Number 04 04 166 892, value, $1,655.72; a savings account at the Guardian Federal Savings & Loan Association, Washington, D.C., Pass Book Number 59977, value, $6,056.28.

7. That decedent, so far as your petitioner is able to ascertain, after diligent search and inquiry, left no debts besides the expenses of his funeral, in the sum of $706.31, less a Veteran's Administration Allowance of $250.00, making a balance of the amount due of $456.31.

8. That petitioner is advised that he is entitled to apply for letters of administration to issue to himself; and that the next of kin of the decedent, being adults and sui juris, have executed a consent to appointment of your petitioner with an undertaking of $1,000.00 only, and have waived protection of any larger undertaking, so far as their interests are concerned.

WHEREFORE, the premises considered, the petitioner prays:

1. That letters of administration be granted to this petitioner, and that he be permitted to qualify by giving an undertaking in the sum of $1,000.00 only, conditioned for the faithful performance of his trust.

2. That the Court grant petitioner such other and further relief as to the Court may seem just and proper.

/s/ John O. Harper
213 Southern Building
Washington, D.C. 20005

/s/ John O. Harper
3941 Military Rd., N.W.
Washington, D.C. 20016

[Certification]

[Jurat]

[Filed March 30, 1965]

ORDER GRANTING ADMINISTRATION

Upon consideration of the petition of John O. Harper, filed herein the 29th day of March, 1965, for letters of administration, and it appearing to the satisfaction of the Court that George Barney Lee, deceased, departed this life intestate, it is by the Court, this 5th day of April, 1965,

Adjudged, Ordered and Decreed that John O. Harper be and he hereby is appointed administrator of the Estate of George Barney Lee, deceased, and that letters of administration on said estate issue to John O. Harper upon his filing an undertaking, with security approved by the Court, in the sum of One Thousand Dollars, conditioned for the faithful performance of the trust in him reposed.

/s/ Matthew F. McGuire
Judge

[Filed October 7, 1965]

PETITION BY ADMINISTRATOR FOR RULE TO SHOW CAUSE FOR DISCOVERY AND DELIVERY OF ASSETS

The petition of John O. Harper respectfully represents unto the Court as follows:

1. That the Court granted letters of administration on the above estate to petitioner, and he has qualified by taking the oath and giving a general undertaking required by law in the sum of $1000.00.

2. That he is advised and believes, and upon such information and belief avers: that Robert E. Lee, brother of George Barney Lee, deceased, attended the funeral of said deceased on January 27, 1965; that soon thereafter, Robert E. Lee collected George Lee's personal belongings from the deceased's residence at 1720 P Street, N. W., Washington, D. C.; that Robert Lee then attempted to withdraw the funds on deposit in George Lee's

checking account at Riggs National Bank in the amount of $1,657.72, the contents of the safe deposit box at the Riggs National Bank which were fifty-seven United States Savings Bonds valued at $2,875.00, and the funds on deposit at Guardian Federal Savings and Loan Association in the amount of $6076.46; that all requests were refused by the above-mentioned institutions at that time on the grounds that Robert Lee was not clothed with authority to assume control of these funds; that on February 1, 1965, Robert E. Lee, through his attorney, C. W. Gross, 701-704 First National Bank Building, Tuscaloosa, Alabama, contacted Guardian Federal Savings and Loan Association by letter alleging that Robert Lee had been appointed Administrator Ad Collegendum of the Estate of George Barney Lee, deceased, by the Tuscaloosa County, Alabama, Probate Court; that, in fact, Robert Lee was not appointed such administrator Ad Collegendum until February 2, 1965; that a Petition for Letters of Ancillary Administration was never filed in this court by Robert Lee or any other person; that no Letters of Ancillary Administration were ever issued by this Honorable Court; that on or about February 16, 1965, pursuant to the Letters of Administration Ad Collegendum issued by the Tuscaloosa County, Alabama, Probate Court, Guardian Federal Savings and Loan Association released the funds contained in Account Number 59977 belonging to George Barney Lee on the date of his death plus interest accrued to the date of withdrawal, in the amount of $6,076.46; that Robert Lee received such funds and is now holding them; that he obtained such funds without presenting either a copy of Form 55, issued by the Register of Wills for the District of Columbia, Clerk of the Probate Court, or the pass book for the above-numbered account, as required by the Association's by-laws.

3. That he is advised and believes, and upon such information and belief avers, that the Guardian Federal Savings and Loan Association, 1369 Connecticut Avenue, N. W., Washington, D. C., is in possession of valuable assets, to wit, $6,076.46, in Savings Account No. 59977, which belonged to George Barney Lee, prior to his death, and which should be turned over to your petitioner as the duly qualified administrator of this estate.

4. That on the 8th day of April, 1965, your petitioner, acting as attorney for the administrator, appeared at the above address of Guardian Federal Savings and Loan Association, presented a copy of the Form 55 issued by the Register of Wills for the District of Columbia, Clerk of the Probate Court, and the passbook for the above-numbered savings account, as required by the Association's by-laws, and requested the Association to turn over all assets in its possession belonging to the estate. At this time, said passbook showed a balance in George Lee's account as of January 7, 1965, of $6,056.28. Accrued principal and interest at the time afore-mentioned was $6,076.46. The teller at the said Guardian Federal Savings and Loan Association then falsely entered the following notations in the pass book for Savings Account No. 59977:

"Date	Desc.	Withdrawals	Savings & Dividends	Balance
April 8 65	2/16	DVI	20.18	6,076.46
April 8 65	2/16	6,076.46-		.00
Account closed"				

Further, on June 3, 1965, formal demand for these assets was made by letter, a copy of which was attached to the Inventory of Money and Debts Due to Deceased, filed with this Court. The said Guardian Federal Savings and Loan Association has failed and refused and still fails and refuses to comply with the said demand.

Wherefore, the premises considered, your petitioner prays as follows:

1. That a Rule to Show Cause be issued by this Honorable Court directed to Joseph V. Gartlan, Jr., 815 Connecticut Avenue, N. W., Washington, D. C. 20006, attorney for Guardian Federal Savings and Loan Association and Robert E. Lee, 111 Greenview, Tuscaloosa, Alabama, requiring them to appear on a day certain to answer and disclose what assets are in the possession of the above-entitled association belonging to the above-named decedent, and the location of the same.

2. That upon the hearing of said Rule this Court require said Guardian Federal Savings and Loan Association and/or Robert E. Lee to deliver to petitioner the assets in its possession belonging to the estate of the said decedent.

3. And for such other and further relief as to the Court may seem proper and exigencies of the case may require.

/s/ John O. Harper
1744 R Street, N. W.
Washington, D. C. 20009
232-2600
Attorney for Petitioner

/s/ John O. Harper

[Certification]

[Jurat]

[Filed October 8, 1965]

RULE TO SHOW CAUSE

Upon consideration of the petition of John O. Harper, administrator, herein filed the 7th day of October, 1965, it is by the Court this 8th day of October, 1965,

Ordered that Joseph V. Gartlan, attorney for Guardian Federal Savings and Loan Association, and Robert E. Lee appear in this Court at ten o'clock A. M. on the 10th day of November, 1965, and show cause, if any they have, why the aforementioned Association should not be required by this Court to turn over all of the said assets to John O. Harper, the administrator of this estate, provided that a copy of said petition and this order be served upon them on or before the 26th day of October, 1965.

/s/ Joseph C. McGarraghy
Judge

[Filed October 20, 1965]

AMENDED RULE TO SHOW CAUSE

Upon consideration of the petition of John O. Harper, Administrator, and the Rule to Show Cause filed the Seventh day of October, 1965, and the representation of Joseph V. Gartlan that he does not represent Guardian Federal Savings & Loan Association, it is by the Court this 20th day of October, 1965,

Ordered, That the Guardian Federal Savings & Loan Association, through its officer, appear in this Court at ten o'clock a.m. on the Tenth day of November, 1965, and show cause, if any it has, why it should not disclose all of the assets, papers, data, and information it has in its possession belonging to the above estate and the location of the same, and why it should not be required by this Court to turn over all of the said assets, papers and other information to John O. Harper, the administrator of this estate, provided a copy of said petition and this order be served upon it on or before the Twenty-Sixth day of October, 1965.

/s/ Howard F. Corcoran
Judge

[Filed November 26, 1965]

MEMORANDUM OF POINTS AND AUTHORITIES IN ANSWER TO RULE TO SHOW CAUSE

Comes now Guardian Federal Savings & Loan Association, by counsel, and in opposition to the Rule to Show Cause and the Amended Rule to Show Cause entered herein, respectfully shows to this Court as follows:

1. As the Petition for a Rule to Show Cause filed herein shows (paragraph 2) this respondent paid out to Robert E. Lee the sum of $6,076.46 upon the demand of Robert E. Lee and pursuant to Letters of

Administration ad collegendum issued to the said Robert E. Lee by the Probate Court in and for Tuscaloosa County, Alabama. Such Letters had to have been issued on the basis of jurisdictional facts found to exist by the Alabama Court. This Petition constitutes a collateral attack on the judgment of the Alabama Court in that respect which may not be maintained in this Court. Tucker v. Nebeker (1894), 2 App. D. C. 326; Consaul v. Cummings (1904) 24 App. D. C. 36.

2. Petitioner's contention that the payment by the Association as alleged in the Petition was improper because Mr. Lee did not seek ancillary administration in the District of Columbia is without merit. The provision of the District of Columbia Code (Section 18-501 et seq.) for ancillary administration has been held to be a statute for the protection of local creditors of a non-resident decedent. Sackett, et al v. Osgood (1945) 80 U. S. App. D. C. 99, 149 Fed. 2nd 825. A person in the District of Columbia holding property of a non-resident decedent who delivers or pays such property or money to a foreign fiduciary should not be made to pay twice if there are no local creditors of the decedent or, if there are such creditors, they have not been prejudiced. Cf. 2 Mersch, Probate Court Practice in the District of Columbia 257, Section 1785 and authorities therein cited.

For these and for such other and further reasons as may be shown to the Court upon a hearing of this matter, it is respectfully submitted that the Order to Show Cause should be vacated and the Petition should be denied.

MELROD, REDMAN & GARTLAN

/s/ Joseph V. Gartlan, Jr.
Attorneys for Guardian Federal
Savings & Loan Association

[Certificate of Service]

[Filed November 30, 1965]

ORDER

This cause coming on to be heard on November 29, 1965, upon the petition by the Administrator, John O. Harper, for a rule to show cause for discovery and delivery of assets, and the Court having considered said motion and the answer tendered therewith, and it appearing to the Court that the said John O. Harper should be given possession of the assets of the Estate of George Barney Lee, as prayed in said petition, and the Court being duly advised in the premises, it is, by the Court, this 30th day of November, 1965,

ORDERED, That Guardian Federal Savings and Loan Association be and it is hereby required to deliver to John O. Harper, the Administrator of the Estate of George Barney Lee, the sum of $6076.46, as assets of the aforementioned estate, as prayed in said petition.

/s/ Joseph C. McGarraghy
Judge

[Certificate of Service]

[Filed April 25, 1966]

MOTION TO SET ASIDE ORDER
TO DELIVER ASSETS

Comes now Guardian Federal Savings & Loan Association, by counsel, and moves this Honorable Court for an order vacating and setting aside the order heretofore entered herein on the 30th day of November, 1965, requiring the said Guardian Federal Savings & Loan Association to deliver to John O. Harper, Administrator of the estate of the above-named decedent, certain claimed assets of the estate, and as grounds therefor

states that the title or right to possession of this fund is and was disputed and that this Court, "Holding Probate Court", is without jurisdiction in such circumstances to decide disputes regarding the title or right to possession of personal property.

MELROD, REDMAN & GARTLAN

/s/ Joseph V. Gartlan, Jr.
815 Connecticut Avenue, N. W.
Washington, D. C.

[Certificate of Service]

[Filed April 26, 1966]

EXHIBIT A

LAW OFFICES
DOWNEY RICE

June 3, 1965

Guardian Federal Savings and Loan Association
DuPont Circle Office
1369 Connecticut Avenue, N. W.
Washington 6, D. C.

Gentlemen:

On April 5, 1965, I qualified as Administrator of the Estate of George Barney Lee, late of the District of Columbia. On April 8, 1965, after presenting the exemplification of my letters of administration, granted by the United States District Court for the District of Columbia, holding a Probate Court, I asked for the funds on deposit in Mr. Lee's name, Savings Account Number 59977, and at that time presented the pass book for the account, showing a balance of $6056.28, with accumulated dividends of $20.18. This request was refused. At that time, I was informed that you had turned the funds over to Robert E. Lee, the deceased depositor's brother.

Under the laws of the District of Columbia, Title 18, Section 301, I am required, as administrator of the Lee Estate, to account for the funds on deposit with your office as of the date of death of the depositor. Your office did not have the authority to release the funds to Robert E. Lee, and by this letter, I am now making formal demand for these funds in the amount of $6076.46, as the duly appointed representative of the Lee Estate. Under Title 20, Section 501 and Title 20, Section 503, of the Laws of the District of Columbia, I am authorized to require your office to reimburse me for these funds.

Will you kindly let me know what your position is regarding this matter? However, failure to hear from you by June 10, 1965, will result in my taking appropriate legal steps to protect the interests of the Estate.

Sincerely yours,

/s/ John Harper

[Filed April 27, 1966]

OPPOSITION TO MOTION TO SET ASIDE ORDER TO DELIVER ASSETS AND COUNTER-MOTION TO ENFORCE ORDER TO DELIVER ASSETS

Comes now John O. Harper, administrator and counsel for the above-entitled estate, hereinafter called the "administrator," and opposes the motion to set aside order to deliver assets, filed on April 22, 1966, by the attorney for Guardian Federal Savings and Loan Association, and moves this Honorable Court for a counter-motion to enforce the order to deliver assets, entered November 30, 1965, by the Honorable Joseph C. McGarraghy.

As grounds for the opposition to the motion of Guardian Federal Savings and Loan Association, hereinafter referred to as "Guardian Federal," and as grounds for a counter-motion to enforce the order of this Honorable Court, entered November 30, 1965, the administrator alleges:

1. That the title or right to possession of the aforementioned assets, located in the District of Columbia, is not in dispute, but is vested in the administrator of the estate, appointed by this Court;

2. That this Honorable Court, on November 30, 1965, the Honorable Joseph C. McGarraghy presiding, heard counsel for both sides present their arguments, and, after careful consideration, ruled that John O. Harper, as administrator of the aforementioned estate, appointed by this Court, was entitled to the funds of deceased on deposit with Guardian Federal, at the time of his death.

3. That Guardian Federal has not filed the said motion to set aside within a reasonable time, approximately five months having elapsed since the entry of the order, to wit, from November 30, 1965, until April 27, 1966.

/s/ John O. Harper

1744 R. Street, N. W.
Washington, D. C. 20009
232-2600

[Certificate of Service]

[Filed April 27, 1966]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
HOLDING PROBATE COURT

In Re Estate of :
George Barney Lee : Administration No. 113673
Deceased :

POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO MOTION TO SET ASIDE ORDER REQUIRING DELIVERY OF ASSETS AND COUNTER-MOTION TO ENFORCE ORDER TO DELIVER ASSETS, WITH THE AFFIDAVIT OF THE ADMINISTRATOR

Comes now, John O. Harper, as administrator and counsel for the Estate of George Barney Lee, and opposing the motion of Guardian Federal to set aside the order requiring delivery of assets, respectfully states:

1. On the date of George Barney Lee's death, January 23, 1965, he owned the following personal property within the confines of the District of Columbia:

A. A checking account amounting to $1655.72, at the Riggs National Bank, Washington, D. C.;

B. United States Savings Bonds, amounting to $2875.00, located in a safe deposit box at Riggs National Bank, Washington, D. C.;

C. And, a savings account at Guardian Federal Savings and Loan Association, amounting to $6076.46.

After qualifying before this Court on April 5, 1965, your administrator, on April 8, 1965, demanded from Guardian Federal the proceeds of

the savings account on deposit with that institution, tendering Savings Account Book No. 59977. Said Guardian Federal refused this demand, alleging a prior withdrawal of the funds by decedent's brother, Robert E. Lee, after presentation by Robert E. Lee of his appointment as Administrator Ad Colligendum by the Tuscaloosa, Alabama, County Court. Robert E. Lee had not qualified as ancillary administrator to administer the decedent's personal property, as required by District of Columbia Law, D. C. Code Annotated §§20-331 (Supp. V, 1966). In re Grinnage's Estate, 101 F.2d 695, 69 App. D.C. 370 (1939). In addition, Robert E. Lee made no attempt to qualify as a collector in accordance with the requirements of the District of Columbia laws. D. C. Code Annotated §§20-501 (Supp. V, 1966).

Having been qualified as the District of Columbia Administrator for the Estate of George Barney Lee, John O. Harper was authorized by District of Columbia Law, D. C. Code Annotated §§20-1503 (Supp. V, 1966), as follows: "When an . . . . adminstrator . . . . believes that a person is concealing any part of his decedent's estate, he may file a petition in the court alleging the concealment . . . ." (Emphasis supplied.) Counsel for Guardian Federal suggests, in his points and authorities supporting his motion, that this Court should construe the words "conceal" and "concealment" narrowly. However, the administrator contends that the aforementioned statute, read in its entirety, gives the administrator the right to file such a petition, even if he only believes that a person is concealing part of the decedent's estate. The administrator further contends that, in view of the circumstances surrounding his demand to Guardian Federal, outlined in his affidavit attached hereto, he could reasonably believe that the assets were being concealed from him.

In addition, the administrator contends that the pivotal issue posed by his Petition for a Rule to Show Cause filed on October 7, 1965, and this, Guardian Federal's motion, is: what authority, if any, does an Alabama Administrator Ad Colligendum have with regard to assets of a

Washington, D. C., domiciliary located in the District of Columbia, when the foreign fiduciary has not obtained ancillary letters of administration, or any other authority, from the United States District Court for the District of Columbia, Holding Probate Court? The administrator submits that, even assuming that the decedent died domiciled in Alabama, which is denied, he has no authority to demand, receive, or remove to Alabama the assets so located, at least until the above-entitled court is satisfied that there are no creditors within the District of Columbia who may have claims against the estate. Duehay v. Acacia Mutual Life Insurance Company, 70 App. D.C. 245, 105 F.2d 768, 124 A.L.R. 1268 (1939).

The administrator therefore strongly disagrees with counsel for Guardian Federal, who contends that "the sole question therefore is whether this Court sitting as a Probate Court had jurisdiction to determine the question of title and control the possession of this property." The title to this property must rest with either a foreign fiduciary who failed to take the proper steps to qualify as an ancillary administrator in the District of Columbia, or a local administrator who did so qualify The title to the property is not the central issue before this Court sitting as a Probate Court. This Court must first decide which of the above parties is the proper fiduciary to assume control and take possession of all the assets of decedent in the District of Columbia. This, clearly, is within the jurisdiction of this Court, and in deciding this question, this Probate Court need not accept the appointment of a foreign fiduciary as binding on its own deliberations. In re Grimmage's Estate, supra; D.C. Code Annotated §§20-201 (1961). Because the title to the property is not specifically at issue here, the Holzbeierlein, Cook, Watkins and Richardson cases cited by counsel for Guardian Federal are inapplicable to the instant case.

2. Opposing counsel argued administrator's petitition to show cause for discovery and delivery of assets, at length, on November 29, 1965. Approximately five months have elapsed

since the date of the entry of the order, November 30, 1965, requiring Guardian Federal to pay over the funds in question to John O. Harper, as administrator for the Estate of George Barney Lee. The rule of procedure governing the filing of a motion for relief from a judgment or order requires that this "motion shall be made within a reasonable time," and that the Court may only grant the motion "upon such terms as are just." Fed. R. Civ. P. 60(b). The administrator assumes that Guardian Federal's motion would be based on subdivision (b)(6) of the foregoing rule, providing for relief for "any other reason." Further, it is clear that what constitutes a "reasonable time" under this rule is to be decided under the circumstances of each case. Delzona Corporation v. Sacks, 256 F.2d 157 (3rd Cir. 1959). L. M. Leathers' Sons v. Goldman, 252 F. 2d 188 (6th Cir. 1958). It should be noted here that on April 5, 1966, one year had elapsed since the appointment of John O. Harper as administrator of the Estate. Before that date, the first account of the administrator was required to be filed with the Probate Court, according to the laws of the District of Columbia. D. C. Code Annotated §§20-1701 (Supp. V, 1966). The administrator submits that the five months elapsing from November 30, 1965, to April 5, 1966, is a "reasonable time" under the circumstances of the instant case, for it is clear that it is now the duty of the administrator to deliver up and distribute the residue of the estate to those entitled thereto. Sterrett v. National Safe Deposit, Savings & Trust Company, 10 App. D. C. 131 (1897). After entry of the order on November 30, 1965, counsel for Guardian Federal, Joseph V. Gartlan, Jr., Esquire, requested that the administrator delay enforcement of the order until he could file a motion to set it aside "within a few weeks." Subsequent inquiries every few weeks by the administrator requesting that Mr. Gartlan take action on the matter produced no better results. In the interim, the administrator took all necessary steps to wind up the Administration of the estate. It was only when the maximum time allowed for filing the administrator's account was one week away that the administrator

informed Mr. Gartlan that he intended to file a petition for a rule to show cause why his client , Guardian Federal, should not be held in contempt of the court order of November 30, 1965, that action was taken. The action taken, the filing of Guardian Federal's motion to set aside the order, on April 22, 1966, was, in the opinion of the administrator, dilatory in nature, and did not raise any issues which could not have been raised on November 29, 1965.

Therefore, Guardian Federal's motion to set aside order requiring delivery of assets should be denied.

Further, the administrator, John. O. Harper, moves the Court in a Counter-motion, for an order to command Guardian Federal to deliver the assets in its possession at the date of death of decedent, to wit, January 23, 1965, to John O. Harper, administrator of the Estate of George Barney Lee, upon the following grounds:

1. That the administrator has sufficient reason to believe that Guardian Federal was concealing assets belonging to the Estate of George Barney Lee;

2. That the Riggs National Bank, Dupont Circle Branch, had refused to release the assets of decedent to Robert E. Lee until he obtained ancillary letters of administration in the District of Columbia, or a District of Columbia administrator had been appointed;

3. That Guardian Federal's motion to set aside the order of this Court dated November 30, 1965, was not filed within a reasonable time;

4. And for other good and sufficent reasons.

All of which appears more fully in the affidavit of John O. Harper, annexed hereto as Exhibit "A".

Respectfully submitted,

/s/ John O. Harper
Administrator of the Estate of
George Barney Lee
1744 R Street, N.W.
Washington, D.C. 20009
232-2600

EXHIBIT "A"

AFFIDAVIT OF JOHN O. HARPER, ADMINISTRATOR OF THE ESTATE OF GEORGE BARNEY LEE, IN SUPPORT OF HIS COUNTER-MOTION TO ENFORCE ORDER TO DELIVER ASSETS, AND ANNEXED THERETO AS EXHIBIT "A"

City of Washington)
District of Columbia) SS:

Before me, a notary public in and for said City and District, personally appeared John O. Harper, who being first duly sworn, on oath deposes and says:

1. That an exact copy of the last page of Guardian Federal Savings and Loan Association Savings Pass Book Number 59977 appears as follows:

DATE	DESC.	WITHDRAWALS	SAVINGS & DIVIDENDS	BALANCE
JUN 25 64				3,677.96 CR
JUN 25 64			100.00	3,777.96 CR
JUN 26 64			100.00	3,877.96 CR
JUL 30 64	DV2		34.28	3,912.24 CR
JUL 3 64			150.00	4,062.24 CR
JUL 10 64			100.00	4,162.24 CR
JUL 20 64			100.00	4,262.24 CR
AUG 7 64			150.00	4,412.24 CR
AUG 14 64			100.00	4,512.24 CR
AUG 21 64			100.00	4,612.24 CR
SEP 15 64			350.00	4,962.24 -
OCT 10 64		DV3	45.46	5,007.70 -
OCT 10 64			350.00	5,357.70 -
JAN 7 65		DV4	53.58	5,411.28 P S
JAN 7 65			645.00	6,056.28 P S
FEB 8 65	2/16	DV1	20.18	6,076.46 -
FEB 8 65	2/16	6,076.46 -		.00 * -

ACCOUNT CLOSED

MEMBER OF FEDERAL HOME LOAN BANK SYSTEM
SAVINGS INSURED UP TO $10,000 BY THE
FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

When affiant received said book from Lucy Lee, sole heir of the deceased, neither the last two lines, nor the words "Account Closed" were inscribed thereon. On April 8, 1965, when affiant presented the passbook to the cashier at Guardian Federal, the last two lines and the words "Account Closed" were added.

2. That an exact copy of the inside cover and the first page of the aforementioned passbook appears as follows:

SAVINGS ACCOUNT No. 59977

This Certifies that

George B. Lee

holds a Savings Account representing share interests in Guardian Federal Savings and Loan Association, subject to its charter and by-laws, the Rules and Regulations for the Federal Savings and Loan System, and to the laws of the United States of America.

GUARDIAN FEDERAL SAVINGS
AND LOAN ASSOCIATION

INFORMATION FOR SAVINGS ACCOUNT MEMBERS

1. Remittances may be made through the mail by check or money order.

2. All dealings with the Association are strictly confidential, and no information, not even the existence of an account, is given to others.

3. The amount shown in the balance column is for the guidance of the account holder and is not to be taken as correct unless verified by comparison with the books of the Association. All items credited in this book are subject to final collection of check or draft.

4. Request for withdrawal shall be honored only upon satisfactory verification of account holders' signatures and presentation of this book. This Association has followed the practice of granting withdrawals on demand but reserves the right to require thirty days' written notice in accordance with the By-Laws. This book must be presented for withdrawals.

5. Dividends at the rate declared by the Board of Directors are credited to each account quarterly. Payments received on or before the tenth day of the month will be credited with such dividends from the first day of the month or if received after the tenth day of the month, from the first day of the following month. Dividends are not paid on withdrawals.

6. If this pass book is lost, misplaced or stolen the Association must be notified immediately in writing. Upon receipt of satisfactory indemnity the Association may cause a substitute pass book to be issued one month after receipt of notice that this book has been lost, misplaced or stolen.

7. Please notify the Association promptly of any change in your address.

ALWAYS BRING THIS BOOK WITH YOU
OR MAIL WITH PAYMENT

3. Further deposing, affiant says that Robert E. Lee's requested withdrawal of assets from the Riggs National Bank, Dupont Circle Branch, Washington, D. C., was, at all times refused by that institution, on the grounds that he was not clothed with the proper authority to assume control of these assets.

4. That this affidavit is made in support of his Counter-Motion to Enforce Order to Deliver Assets filed herein, upon grounds stated in the body of this motion.

/s/ John O. Harper

[Jurat]

[Filed May 24, 1966]

MEMORANDUM AND ORDER

George Barney Lee died on January 23, 1965 in the Walter Reed General Hospital in the District of Columbia. At the time of his death, there was on deposit to his credit with Guardian Federal Savings & Loan Association in savings account No. 59977 the sum of $6056.28. About one week after his death, namely, on February 2, 1965, a brother of the decedent obtained letters of administration in his estate in the Probate Court of Tuscaloosa County, Alabama, and on February 16, 1965, less than a month from the date of death, the Association, without requiring ancillary letters of administration to be issued by this court, paid over to the Alabama administrator the sum of $6076.46 representing the deposit plus accrued interest.

On March 30, 1965, upon the petition of John O. Harper as the representative of decedent's mother, described as his sole heir at law and next of kin, this court granted letters of administration on the estate of the decedent to John O. Harper and he duly qualified. It will be noted that the letters of administration thus granted were approximately two months from the date of death.

Thereafter, on April 8, 1965, the administrator appointed by this court made demand on the Association for payment of the sum of $6076.46, which demand was refused. It will be noted that this demand was made in less than three months after the date of decedent's death.

On June 4, 1965, (less than five months after decedent's death), the administrator filed his inventory of money and debts due to deceased which included the sum of $6076.46 in the savings account at Guardian Federal Savings & Loan Association.

Thereafter, proceedings were instituted in this court by the administrator filing a petition for a Rule to Show Cause against the Association which duly filed its answer to said Rule and, after hearing, this court entered an order dated November 30, 1965 directing the Association to pay and deliver to John O. Harper, administrator of the estate of George Barney Lee, the sum of $6076.46 as assets of the estate.

Although the order was entered on November 30, 1965, it was not complied with nor was any action taken to vacate the same until April 25, 1966, when the Association, through its counsel, filed a motion to set aside the order upon the ground that this court, holding a probate court, "is without jurisdiction in such circumstances to decide disputes regarding the title or right to possession of personal property."

The court is of the opinion that the Association was in error when it paid the amount on deposit to the Alabama administrator without requiring ancillary letters of administration in this jurisdiction in view of the provisions of Title 18, D. C. Code, Sec. 501, the substance of which is now found in Title 20, Sec. 1329 of the 1966 Edition of the D. C. Code, which furnishes protection for local creditors of an estate for a period of six months after death.

The motion to set aside the order attacks the jurisdiction of the Probate Court since it is claimed that the action taken involved the title or right to possession of personal property. The court is of the opinion that this contention is without merit. There was no question of title involved.

No one contended that the sum on deposit to the credit of decedent as of the date of his death did not belong to him. The only question related to whom it should be paid.

The court is of the opinion that the order of November 30, 1965 directing such payment be made to the administrator appointed by this court was correct and was within the jurisdiction of the court and should be enforced.

Accordingly, the motion to set aside the order of November 30, 1965 is denied.

/s/ Judge McGarraghy
Judge

[Filed June 20, 1966]

NOTICE OF APPEAL

Notice is hereby given this 17th day of June, 1966, that Guardian Federal Savings & Loan Association hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 24th day of May, 1966 in favor of John O. Harper, Administrator of the Estate of George Barney Lee against said Guardian Federal Savings & Loan Association.

/s/ Joseph V. Gartlan, Jr.
Attorney for
Guardian Federal Savings &
Loan Association
